

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In The Matter of)	
)	
The Ad Hoc Coalition of International)	WC Docket No. 06-122
Telecommunications Companies for Declaratory)	
Rulings That (1) the Universal Service)	
Administrative Company Lacks Authority to)	
Indirectly Assess Universal Service Fund Fees on)	
International Only Providers and (2) the FCC)	
Lacks Jurisdiction Over Certain Non-U.S.)	
International Providers, or in the Alternative, to)	
Initiate a Rulemaking Proceeding to Examine)	
These Issues)	

**COMMENTS OF GLOBECOMM SYSTEMS, INC. IN SUPPORT OF
AD HOC COALITION OF INTERNATIONAL TELECOMMUNICATIONS
COMPANIES PETITION FOR DECLARATORY RULINGS OR RULEMAKINGS
REGARDING UNIVERSAL SERVICE CONTRIBUTIONS**

1. Globecomm Systems, Inc. (“GSI”) submits these comments in response to the Public Notice released September 28, 2009.¹ The Public Notice solicited comments on a petition (the “Petition”) filed by the Ad Hoc Coalition of International Telecommunications Companies (the “Coalition”) which seeks declaratory rulings from the Commission that the Universal Service Administrative Company (“USAC”) lacks authority to indirectly assess universal service fund (“USF”) contributions on international-only providers, and that the Commission lacks jurisdiction over certain non-U.S. international providers. GSI supports the Petition insofar as GSI agrees that the FCC-designated fund administrators USAC and the National Exchange Carriers’ Association (“NECA”) overreach their authority in imposing involuntary fund contributions assessments on international-only carriers.

¹ Public Notice, Comment Sought on Petition of Ad Hoc Coalition of International Telecommunications Companies for Declaratory Rulings or Rulemaking Regarding Universal Service Contributions, DA 09-2118 (rel. Sept. 28, 2009).

2. GSI provides predominantly international services and a majority of its traffic does not originate or terminate in the United States, although it transits the U.S. via satellite downlink for accounting purposes and/or to interconnect with other telecommunications carriers. The portion of GSI's traffic which does originate or terminate in the U.S. consists of satellite carriage to and from its foreign hub as well as PSTN or VOIP circuit access leased from other carriers. Thus, GSI's current interstate revenues are *de minimis* for purposes of USF contribution assessment; however the Petition raises concerns that GSI may soon find itself in the objectionable position of those international-only carriers who have been subjected to indirect USF contribution charges.

3. GSI is particularly concerned about the prospect of such unauthorized and *ultra vires* imposition of fees in light of the inexplicable imposition on GSI by NECA, a fund administrator operating with even less specific authority from the Commission than USAC,² of Telecommunications Relay Services ("TRS") fund contribution obligations. As noted in its 2006 Petition for Declaratory Ruling (the "2006 Petition") (a copy of which is attached hereto as Exhibit A), since 2005 GSI has been subjected to TRS Fund payment obligations for international revenues from traffic that does not originate or terminate in the U.S. and do not connect to end users.³ As argued in GSI's 2006 Petition, imposition of TRS contributions based on an assessment of revenues arising directly from international-only traffic is expressly contrary to Section 64.604(c)(5)(iii)(A) of the Commission's Rules and is in direct contravention of the

² While Section 54.702 of the Commission's Rules provide a delineated framework for the role and functions of the USF administrator, few similar provisions exist in the Commission Rules for the NECA administration of the TRS fund. *Compare* 47 U.S.C. § 54.702 (entire rule section details the responsibilities of the USAC and its function *vis-a-vis* the FCC) *with* 47 U.S.C. § 64.604 (section focuses on the requirements for TRS providers and contributors, with the administrator's role discussed only in subsection (c)).

³ No Commission action has been taken to date on the 2006 Petition.

underlying intent of the fund contribution requirements – which are designed to ensure providers who benefit from the fund support the fund. Like the apparent unfounded USAC rule interpretation discussed in the Coalition Petition, NECA apparently found a basis for its assessment calculation in a comment by another carrier referenced by the Commission in a footnote to a 1993 order, clearly insufficient basis for the imposition of fund obligations.⁴

4. By imposing fund obligations on carrier revenues which are exempt, both administrators substantively alter federal regulations without the requisite authority. GSI therefore supports the Coalition's request for declaratory ruling for the cessation of USAC's indirect assessment of USF contributions on international-only providers, and reiterates its previous request for a similar ruling regarding the inappropriate assessment of TRS Fund obligations by NECA on international-only revenues. In the alternative, GSI supports the Coalition's call for a rulemaking procedure with public notice and comment opportunities, as required by the Administrative Procedure Act, to address the propriety of the imposition of USF and TRS fees on international-only providers and to clarify the authority of the corresponding fund administrators in assessment formula determinations.

Respectfully submitted,

/s/

Michelle A. McClure

Davina S. Sashkin

Counsel for Globecomm Systems, Inc.

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
Eleventh Floor
Arlington, VA 22209
(703) 812-0400

October 27, 2009

⁴ See Exhibit A, at 2-3 (citing *Telecommunications Relay Service and the Americans with Disabilities Act of 1990*, Third Report & Order, 8 FCC Rcd 5300, n.14 (1993)).

EXHIBIT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Provision of International Service by)
GlobeComm Systems, Inc.)
Is not an Interstate Service for)
Purposes of the TRS Fund)

RECEIVED - FCC

FEB 14 2006

Federal Communication Commission
Bureau / Office

To: Wireline Competition Bureau

PETITION FOR DECLARATORY RULING

1. Pursuant to Section 1.2 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.2, GlobeComm Systems, Inc. ("GSI") hereby petitions for declaratory ruling that the international services consisting of calls which do not originate or terminate in the U.S. as provided by GSI do not include any interstate portion and so does not impose any TRS Fund obligations on GSI. Additionally, the contributions to the TRS Fund previously paid by GSI should be reimbursed.

2. GSI provides only international services. For calls originating or terminating in the U.S., its service consists of a satellite portion (to carry the traffic between the U.S. and the foreign "hub" site) and a portion that runs over the PSTN or VoIP circuits of other telecom carriers from whom it leases lines. However, a great majority of its traffic does not originate or terminate in the U.S. and involves only foreign traffic delivered via satellite. This traffic only transits the U.S., it is down-linked only for accounting purposes or to connect with another telecom carrier, it is never delivered or accessed to or by the general public or end user in the U.S.

3. GSI completed its FCC Form 499-A Telecommunications Report Worksheet ("FCC Form 499-A") and included its revenues arising from international calls that both originate and terminate in foreign points.¹ Subsequently, GSI received an Invoice from NECA dated July 4, 2005, imposing a payment obligation to the TRS Fund. As the NECA cover letter stated, the contribution was based on the contribution factor applied to the 2004 end-user interstate and international revenues of each interstate telecommunications carrier reported on the FCC Form 499-A on April 1, 2005. The Invoice established that payment was due by July 26, 2005. GSI complied with the deadline for payment under protest and reserved its right to appeal the contribution requirement.

4. Section 64.604(c)(5)(iii)(A) of the Commission's rules states that "[e]very carrier providing *interstate* telecommunications services shall contribute to the TRS Fund on the basis of *interstate* end-user telecommunications revenues as described herein" [emphasis added].² The Commission defines the term "interstate communication" as "communication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (B) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (C) between points within the United States but through a foreign country".³

5. The Commission initially determined that it would include international revenues in its calculation of the TRS Fund payment obligations based on the comment of one carrier but

¹ GSI only questions the imposition of the obligation to contribute to the TRS Fund based on those revenues arising from traffic which does not originate and terminate in the U.S. and not any other amounts based upon other revenues.

² 47 C.F.R. § 64.604(c)(5)(iii)(A).

without any analysis or discussion.⁴ The Commission noted that “Sprint argues that international services should be included because TRS providers will be compensated by the administrator for international TRS minutes of use.⁵ Even if it is accepted that such a comment without further discussion or consideration is sufficient basis to impose such an obligation, in GSI’s case the assumption is incorrect because GSI’s international revenues are for traffic that does not originate or terminate in the U.S. and does not connect to the end-user. Hence no TRS services are available and no TRS providers will be compensated for this use of GSI’s traffic.

6. The Commission has specifically exempted such revenues from the contribution base for the Universal Service Fund (“USF”). The instructions for FCC Form 499-A explicitly state:

“Line 412 – International calls that traverse the United States but both originate and terminate in foreign points are excluded from the universal service contribution base regardless of whether the service is provided to reseller or to end users.”

The Commission established an exception for the USF because it found that international services did not directly benefit from the USF.⁶ Likewise, GSI does not directly benefit from the TRS Fund and should not be obligated to contribute to the TRS Fund based on its revenues arising from revenues from that traffic which does not originate or terminate in the U.S.⁷

³ 47 U.S.C. § 153(22); *Report and Order*, Federal-State Joint Board on Universal Service, 12 FCC Rcd 8776 at 9173 (May 7, 1997).

⁴ *Telecommunications Relay Service, and the Americans with Disabilities Act of 1990, Third Report and Order*, 8 FCC Rcd 5300 n. 14 (1993) (“Third Report and Order”).

⁵ *Id.*

⁶ *Federal-State Joint Board on Universal Service, Eighth Report and Order*, 15 FCC Rcd 1679, ¶ 22 (1999).

⁷ The TRS Fund generally compensates for voice-to-text, text-to-voice, speech-to-speech, video relay service (“VRS”), IP relay service, and Spanish language interpreting. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order on Reconsideration*, FCC 05-139, 2005 FCC LEXIS 4084 (July 14, 2005). Such services are not available on GSI traffic which originates and terminates outside the U.S.

7. Traffic which does not originate or terminate in the U.S. does not qualify as an interstate telecommunications service nor do the revenues qualify as interstate end user telecommunications revenues which are intended to be the basis for the TRS Fund contribution obligation. Therefore, revenues based on such traffic should be exempted from the formula for the imposition of the TRS Fund contribution. This result is consistent with the Commission's decisions relating to the USF and is also consistent with the underlying rationale that those entities contributing to the TRS Fund benefits from the fund. Therefore, GSI submits that revenues arising from international traffic not originating or terminating in the U.S. should not be used to determine a carrier's contribution to the TRS Fund. Furthermore, payments made by GSI based upon these revenues should be reimbursed to GSI.

Respectfully submitted,



Michelle A. McClure
Counsel for Globecom Systems, Inc.

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

February 14, 2006